

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE WILLIAM PENN LIFE INSURANCE COMPANY
OF NEW YORK,

Plaintiff,

- against -

KIMBAL VISCUSO, CHARLES M. BIRNS and BETH
S. MARTIN-BIRNS,

Defendants.
-----X

**ANSWER TO
PLAINTIFF'S
COUNTERCLAIM**

08 CIV 1141 (WCC)

Defendants CHARLES M. BIRNS and BETH S. MARTIN-BIRNS, by their attorneys, SARETSKY KATZ DRANOFF & GLASS, L.L.P., answering plaintiff's First Counterclaim, dated April 30, 2008, hereby respond as follows:

1. Deny the allegations of the paragraph of the First Counterclaim designated "14" except to admit that Michael Birns submitted a Beneficiary Change Form to William Penn requesting that the beneficiary of William Penn policy number 0700014261 ("the Fieldman policy") be changed from Kimbal Viscuso to Charles M. Birns and Beth S. Martin-Birns.

2. Admit the allegations of the paragraph of the First Counterclaim designated "15".

3. Deny the allegations of the paragraph of the First Counterclaim designated "16".

4. Deny the allegations of the paragraph of plaintiff's First Counterclaim designated "17".

5. Deny the allegations of the paragraph of plaintiff's First Counterclaim designated "18" except admit that the beneficiary of the Fieldman policy was changed by William Penn to Charles M. Birns and Beth S. Martin-Birns and refer all questions of law to the Court at the time of trial.

6. Deny the allegations of the paragraph of plaintiff's First Counterclaim designated "19", refer all questions of law to the Court at the time of trial and refer to the Fieldman policy for its terms and content.

7. Deny that plaintiff is entitled to the relief sought in the paragraph of plaintiff's First Counterclaim designated "20" and refer all questions of law to the Court at the time of trial.

8. Deny knowledge or information sufficient to form a belief as to the allegations of the paragraph of plaintiff's First Counterclaim designated "21", and refer all questions of law to the Court at the time of trial.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

9. These answering defendants repeat, reiterate and reallege all allegations and affirmative defenses set forth in the Birns defendants' April 7, 2008 Answer to Plaintiff's Complaint for Interpleader with the same force and effect as if set forth fully herein.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

10. Plaintiff is not entitled to reformation of the Fieldman policy because the terms of the policy accurately reflect the intentions of Michael Birns and/or plaintiff at the time that the change of beneficiary was made, and therefore there was no mutual mistake.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

11. Plaintiff is not entitled to reformation of the Fieldman policy because plaintiff's mistake, if any, was the result of its own negligence.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

12. Plaintiff is not entitled to reformation of the Fieldman policy because the Beneficiary Change Form was accepted by plaintiff in conformance with the terms of the Fieldman policy.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

13. Plaintiff is not entitled to reformation of the Fieldman policy because plaintiff has unclean hands.

WHEREFORE, defendants CHARLES M. BIRNS and BETH S. MARTIN-BIRNS demand judgment:

- (i) Dismissing plaintiff's First Counterclaim; and

(ii) awarding these answering defendants the costs, disbursements, expenses and attorneys' fees incurred in this matter together with such other and further relief as this Court deems just and proper.

Dated: New York, New York
May 20, 2008

Yours, etc.,

SARETSKY KATZ DRANOFF & GLASS, L.L.P.
Attorneys for the Bilns Defendants

By: _____

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